Annual Reports 1981

Health Disciplines Board

Denture Therapists Appeal Board

Ministry of Health
Ontario
Larry Grossman, Minister

Ontario

Shop Canadian

Health Disciplines Board
Conseil des disciplines sanitaires

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July 29, 1982

The Honourable Larry Grossman, Esq., Q.C.
Minister of Health

Sir:

I have the honour to submit for your approval the Sixth Annual Report of the Health Disciplines Board, for the period ending December 31, 1981.

This Report also includes a statement concerning the Denture Therapists Appeal Board.

Yours sincerely,

Edward A. Pickering
Chairman

TABLE OF CONTENTS

		Page
Introduction		1
Board Membership		2
Functions		3
Procedures		3
Statistics		4
Release of Decisions		6
Ombudsman		6
Role of Hospitals		7
Consent		8
Responsibility of Complainants		12
Release of Information		13
Denture Therapists Appeal Board		15
Table 1	Summary of Complaint and Registration Cases Received, Reviewed/Heard	16
Table 2	Summary of Completed Cases	17
Table 3	Summary of Decisions referred to the College under s.10(1) (b) & (c)	18

ANNUAL REPORT - 1981

INTRODUCTION

This is the sixth report of the Health Disciplines Board to the Minister of Health as required by Section 7(1)(b) of The Health Disciplines Act. The report covers the Board's activities in the calendar year 1981.

The Board acknowledges the administrative and professional support provided by the Health Boards Secretariat and legal counsel during the year.

Health Boards Secretariat

Donald McKay - Executive Secretary

Louise Hastings - Associate Executive Secretary

Mary Lewczuk
Sylvia Ramkissoon - Secretaries

Legal Counsel

Russell J. Fraser, Q.C.

Ross B. Freeman

BOARD MEMBERSHIP

The Board was established by The Health Disciplines Act, 1974 which was proclaimed on July 14, 1975.

No person may be appointed to the Board who is employed in the public service of the Province, or who is or has been registered in a health profession.

There were two changes in the membership of the Board during 1981. Mr. Harry Sceviour retired after serving the Board for four years. Mrs. Solette N. Gelberg was appointed in September to replace Mr. Sceviour. Mr. Archie B. McFarlane resigned from the Board in November. The Board wishes to express its appreciation to both Mr. Sceviour and Mr. McFarlane for their dedicated service.

MEMBERS

Edward A. Pickering, Chairman	Toronto
Ronald Watson, Vice-Chairman	Scarborough
Warren F. Clayson	Etobicoke
Solette N. Gelberg (Mrs.)	Guelph (appointed Sept.6/81)
Stanley V. Green	Chatham
Archie B. McFarlane	Burlington (to Nov.15/81)
Barbara Nichols (Mrs.)	Sault Ste. Marie
Harry J. Sceviour	Hamilton (to Aug.6/81)

FUNCTIONS

The Health Disciplines Act establishes self-governing colleges for the five major health disciplines, namely, dentistry, medicine, nursing, optometry and pharmacy. The Board was created to perform two separate and distinct functions under the Act:

1. COMPLAINTS: The Board reviews decisions of the complaints committees of the colleges covered by the Act, when either the complainant or the member complained against is not satisfied wih the decision.

2. REGISTRATIONS: The Board, if requested, hears or reviews proposed decisions of the registration committee of the colleges covered by the Act where the registration committee proposes to refuse to grant registration or proposes to attach terms, conditions or limitations to a registrant.

PROCEDURES

Complaints:

In conducting a review, the Board examines the actions of a complaints committee to determine three things: (1) has the committee conducted a full investigation of the complaint?

(2) was the decision reasonable in the light of the investigation?

(3) has it protected the public interest?

The complainant and the respondent have the choice of attending the review in person, being represented by an agent, or submitting written representations. It is, of course, desirable that parties to a review attend in person if at all possible. To assist the Board, it is the practice of the colleges to have an officer attend to acquaint the Board with the investigation of the complaint.

A review is held in closed session to protect the privacy of the individuals concerned, except where both parties specifically request an open meeting, or where the Board considers there is a substantial reason for a public review.

Registration:

An applicant, dissatisfied with a proposed decision of a college registration committee, may apply to the Board for a hearing or a review of that decision.

STATISTICS

In 1981, the Board met on 112 days, reviewed or heard a total of 167 complaint and registration matters, and

issued a total of 160 decisions; 114 from complaint reviews, 33 from registration reviews and 13 from registration hearings (Table 1).

As of December 31, 1981, the Board had 21 outstanding cases. This represents a decrease of 60% in the backlog compared with December 31, 1980. The significant decrease in the backlog of cases was achieved because the Board increased the number of days on which it sat from three to five days on alternative weeks between May 1 and August 31. The Board is currently sitting four days on alternate weeks the year round.

In 1981, 14 of the complaint decisions and 7 of the registration decisions were returned by the Board to the various colleges, with recommendations or direction for further action.

Since the Board began sitting in 1975, it has issued 504 complaint decisions. Of these, 84 were returned to the colleges. In 20 instances the Board required the Complaints Committee to refer the matter to the Discipline Committee. In 17 cases, the Board required the Complaints Committee to issue an admonishment; 47 additional cases were returned for further investigation or with general comments. (see Table 3)

RELEASE OF DECISIONS

In accordance with its policy of keeping the public informed of its activities the Board issued four press releases with the text of decisions from 118 complaint reviews and 19 registration hearings.

The decisions released covered the period from September 29, 1980 to October 31, 1981. To protect the privacy of the parties involved in complaint reviews, the texts of those decisions are released with names of individuals, locations and institutions deleted. Registration hearings are open to the public; these decisions are released in their entirety. The Board now issues its Press Release every two months.

OMBUDSMAN

The policy and practice of the Board continues to be one of full co-operation with the staff of the Ombudsman's office in its investigation of cases reviewed or heard by the Board.

During 1981, 18 responses were written to the Ombudsman. Up to December 31, 1981, the Ombudsman had indicated his intention to investigate a total of 43 decisions of the Health Disciplines Board. The Ombudsman dismissed the

complaint and supported the Board's decision in 20 of the 21 investigations which had been completed up to December 31, 1981.

THE ROLE OF HOSPITALS AS RELATED TO COMPLAINT REVIEWS

The Health Disciplines Board has no authority under the Health Disciplines Act to consider complaints against hospitals, their procedures, or their administration. Not infrequently, however, the Board reviews complaints where the central issue relates in part, to hospital procedures and staffing. From time to time the Board has commented in its decisions on such matters and in some cases has, in the public interest, directed decisions to the attention of the administration of a particular hospital.

Three recent cases involved complex cardiac surgery and the information provided the patients' families. In each of these cases, family members were dissatisfied with the amount of information available to them. The Board recognizes that hospitals, particularly the large teaching hospitals, have an enormous task on their hands to ensure that every detail of a patient's care is properly attended to. In the main, hospitals do provide a high quality of service to patients. It is a fact, however, that hospitalization can be a frightening and

even confusing experience for patients and for their families. The Board believes there is a heavy responsibility on the part of hospitals to ensure that procedures are in place to provide an open and accessible line of communication between all staff physicians, nurses administration and patients and their families.

The Board believes, too, that practitioners have a responsibility, to question and, if necessary to initiate, through appropriate channels, changes in hospital procedures which they feel do not serve the best interests of their patients.

CONSENT:

Consent is defined in the Oxford Dictionary as "voluntary agreement; compliance", and "permission".

The issue of "consent" is one which the Board faced in a number of its cases in 1981. Does the simple act of signing a "consent form" mean that the signer has consented to a particular procedure with full knowledge and understanding of what he or she is consenting to?. What constitutes full knowledge and understanding? Is it wise, in all cases, for a practitioner to inform a patient of every risk or side effect of a procedure, no

matter how remote the possibility of such risk or side effect might be?

Practitioners argue that the release of full information could actually be detrimental to a patient's condition and may result in a patient refusing to undergo a life saving procedure and, further, that some risks and side effects are so remote they are unlikely to occur. The practitioner does have a responsibility to make every effort to ensure that the best possible treatment is provided. On the other hand, the patient must be allowed to exercise his or her right to make a choice.

On a number of occasions, the documents provided the Board by The College of Physicians and Surgeons of Ontario, under Section 8 of the Act, have included copies of standard consent forms used in hospitals. The structure of the forms varies from one hospital to another. However, only one form which came to the Board's attention required the signature of the attending physician. Consent forms generally say something to the effect:

> "I consent to undergo _____ procedure to be performed by Dr. _____ and the nature of the procedure has been explained to me by Dr. _____."

In one particular instance, the doctor named as having provided the information did not see the patient. People facing treatment or surgery may well not be in any state to question the details of a form; to such an individual their signature may represent the key to relief and cure or even to life itself.

The Board believes it is the responsibility of the attending physician to ensure that the patient fully understands what he or she is being asked to sign, what it means, what material risks are involved in the surgery, therapy or treatment and what the outcome of the procedure may, or may not, be.

The Board is quite aware that this issue is not clear cut, that there may be times when complete information could even be harmful to a patient. In addition, there may be situations when it is not practical or even possible to fully inform a patient or his or her family about the possible outcome of a procedure.

Recent Court decisions have addressed the issue of consent in considerable detail. They may perhaps be distilled as follows:

1. The relationship between a physician and a patient gives rise to a duty on the part of the physician to make

disclosure of all the material risks involved in the surgery, therapy or treatment.

2. Material risks are "significant risks that pose a real threat to the patient's life, health or comfort".

3. A physician who recommends an operation which involves known risks, probable risks, specific or unusual risks is under an obligation to inform his patient of these risks. Should he neglect to do so and injury results from one of the undisclosed or not fully disclosed risks, the patient's consent will be held not to constitute an "informed consent".

The result of the above cases does away with the "professional standard" of disclosure and opts for the "full disclosure" standard. The "professional standard" requires that the physician disclose all information that comparable professionals would disclose to their patients in similar circumstances. The "full disclosure" standard, on the other hand, requires disclosure of information that a reasonable man in the position of the plaintiff would want to know in deciding

whether or not to undergo surgery, therapy or treatment. If any one general principal can be drawn from the cases it perhaps can be summarized as follows:

> A patient's consent, whether to surgery, therapy or treatment will give protection to his surgeon or physician only if the patient has been sufficiently informed so as to enable him to make a choice whether or not to submit to the surgery or therapy.

The Board has applied and will continue to apply the above principles in determining the extent of information that should be communicated by a physician to a patient.

RESPONSIBILITY OF COMPLAINANTS:

Under the Health Disciplines Act, complaints may be lodged by members of the public, or members of the relevant College, against any member of the College. The Act does not specify that the complainant must be a patient of the member complained against. This allows parents to complain on behalf of children, and family members to complain on behalf of very ill, severely disabled, or deceased relatives.

In one case before the Board, a complaint was lodged on the basis of hearsay information, against two internationally respected practitioners, by an individual who had no direct knowledge of the practices of the respondents. The complaint was investigated and dismissed by the College. The Board reviewed the matter and confirmed the College's decision. In its decision, the Board commented that the complaint was an irresponsible and unfortunate abuse of the complaint review process. The entire matter caused needless stress, and embarrassment to the respondents.

No complaint should be considered too minor or too insignificant to be reviewed; on the other hand there is a heavy responsibility on the part of complainants to ensure that a complaint is lodged with full consideration of its merits.

RELEASE OF INFORMATION

In previous Annual Reports, the Board has expressed its views on the issue of confidentiality of medical records and the rights of individuals to have access to his or her own medical records and the issues involved in third party medical reports. The Board looks forward to the Government's response to the recommendations of

Mr. Justice Krever on these matters.

The Board believes that an individual complained against must be fully advised of all aspects of the complainant's submission, including the name of the complainant. The Board is aware that in many cases tne colleges do provide the respondent member with a copy of the letter of complaint. In the case of one of the Colleges, however, the respondent is provided only with a summary of the complaint and not with the name of the complainant. The Board is of the view that, unless there are very specific and obvious reasons why the full contents of the letter of complaint and the identification of the author might be harmful to either party, the respondent should be provided with the letter or letters setting out the complaint and the identity of the complainant.

The second aspect of this issue which is of concern is the release of the respondent's reply to the complainant. The Board is pleased that the Colleges do, in most instances, provide copies of members' responses to complainants. The initiation of this procedure has apparently not had any negative effect on amount of detail provided the Colleges by their members.

DENTURE THERAPISTS APPEAL BOARD

The Denture Therapists Appeal Board is established by the Denture Therapists Act, 1974, which was proclaimed on July 14, 1975.

The membership of the Denture Therapists Appeal Board is identical to that of the Health Disciplines Board.

No requests for complaint reviews, registration reviews or registration hearings were received by the Board during 1981.

HEALTH DISCIPLINES BOARD

TABLE 1

Summary of Complaint and Registration
Cases Received, Reviewed/Heard

	1980	1981	Increase/ Decrease
Received	125	128*	2.4%
Reviewed/Heard	92	167*	81%
Decisions Issued	116	160	37.9%
Outstanding	58	21	(36%)

*The Board held extra sessions in order to decrease its backlog.

HEALTH DISCIPLINES BOARD

TABLE 2

Statistical Summary Decision Issued

College	Complaints 1980	Complaints 1981	Registration 1980	Registration 1981
Dentistry	24	29	-	2
Medicine	40	78	12	3
Nursing	3	4	28	39
Optometry	2	-	1	-
Pharmacy	-	3	1	2
TOTAL:	69	114	42	46

Disposition				
Referred back to colleges	10	14	13	7
Confirmed decisions	59	100	29	39
TOTAL:	69	114	42	46

Cases outstanding December 31, 1980	51	7

Cases completed by year

	1975/76	1977	1978	1979	1980	1981	TOTAL
Complaints	85	85	64	87	69	114	504
Registration	66	24	29	17	42	46	224
TOTAL:	151	109	93	104	111	160	728

TABLE 3

HEALTH DISCIPLINES BOARD

Complaint Decisions Referred Back to the Colleges

under s.10(1)(b) & s.10(1)(c)

1975 - 1981

Disposition	COLLEGE					TOTAL
	Dentistry	Medicine	Nursing	Pharmacy	Optometry	
Returned, Directed to the Discipline Committee	4	15	1	0	0	20
Returned to the Complaints Committees:						
(i) for admonishment	7	9	1	0	0	17
(ii) for further investigation	17	18	2	1	0	38
(iii) with comments	6	3	0	0	0	9

Total Complaint Decisions - 504

Decisions Referred Back to Colleges - 84

Percentage returned - 17%